IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.6567 OF 2005

Between:

Md.Iqbal Ali Khan, S/o.Abdul Hameed Khan,
South Central Railway (MG), Secunderabad,

R/o.Aurangabad.

..... PETITIONER

AND

1 Union of India, Rep. by its Secretary to Government of India,
Ministry of Railways, Sanchalan Bhavan, New Delhi.

2 The General Manager, South Central Railway,

Rail Nilayam, Secunderabad.

3 The Divisional Railway Manager (P), South Central Railway

(Hyderabad), Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a direction, order or writ more particularly one in the nature of writ of certiorari (a) calling for records relating to and connected with orders in the O.A.No.627/2003 dated 30.08.2004 and R.A.No.62 of 2004 in O.A.No.627 of 2003 dated 05.11.2004 on the file of Central Administrative Tribunal, Hyderabad and set aside the same;
(b) declare the action of the respondents in issuing proceedings NO.YP/Law/Misc/MAIK/2003 dated 07.05.2003 of the 3rd respondent herein as arbitrary,

illegal, unjust and violative of Articles 14 & 16 of the Constitution of India; and (c) consequently direct the respondents to compute both the periods of service rendered by the petitioner for the purpose of pension and other terminal benefits and direct the respondents to release all benefits of the petitioner would be entitled to together with interest @ 12% per annum from the date on which the amounts became due till the date of actual payment, have become due and payable till the date of actual payment.

Counsel for the Petitioner : MR.SIVA

Counsel for the Respondents : MR.C.YADAGIRI

The Court at the admission stage made the following :

O R D E R

(Per Sri Justice J.Chelameswar)

The petitioner worked as a clerk in the Indian Railways. On certain allegations of misconduct, a charge memo was issued to the petitioner on 05.05.1984, and after due process, by an order dated 01.09.1984, he was removed from the service. The petitioner challenged the order of removal by way of a departmental appeal unsuccessfully. Thereafter, he carried the matter further in revision before the departmental authorities. It appears that the revisionary authority, though did not disturb the finding of the guilt of the petitioner, thought that the punishment of removal was excessive and ordered that the petitioner be reinstated into service by treating his reinstatement as a fresh appointment in the service and the said order became final. The said order is dated 19.03.1985. Pursuant to the said order, the petitioner reported to duty on 22.04.1985. By his application dated 01.06.1990, he sought voluntary retirement from the service. By proceedings dated 06.12.1990, initially the petitioner was informed that he would be permitted to retire from the service with effect from 31.12.1990. Subsequently, by a communication dated 29.12.1990, it was informed to the petitioner that his reinstatement into service pursuant to the orders of the revisionary authorities, was treated as a fresh appointment, and therefore, his request for voluntary retirement cannot be accepted as the requisite qualifying service as per the Rules applicable for seeking voluntary retirement, was not completed by him. Aggrieved by the said order of the employer, the petitioner approached the Central Administrative Tribunal, Bombay Bench, by way of O.A.No.413 of 1991 and the said O.A. was dismissed as being devoid of any merit. Aggrieved by the same, he carried the matter up to the Supreme Court, unsuccessfully.

It appears that in the case of another employee of the Indian Railways, who sought voluntary retirement and whose case was also similar to that of the present writ petitioner, in the sense that it was also a case of termination from service and on an appeal, he was directed to be reinstated treating his appointment as fresh appointment, the Hyderabad Bench of the Central Administrative Tribunal, declared that the departmental/revisionary authorities do not have the power to give a declaration that the reinstatement would be treated as a fresh appointment. The petitioner, therefore, seeks to take advantage of the declaration given in the case of some other employee and filed another application to re-open the whole issue and approached the Central Administrative Tribunal, Hyderabad Bench in O.A.No.627 of 2003, which was rejected by an order dated 30.08.2004. The petitioner sought a review of the said order in R.A.No.62 of 2004, which was also rejected, and hence the present writ petition.

Learned counsel for the petitioner Sri Siva argued that the lower Tribunal erred in dismissing the O.A. and ought to have taken note of the legal position that the revisionary authorities do not have the competence to direct reinstatement treating it as a fresh appointment.

We regret our inability to accept the submission of the learned counsel for the petitioner. The principles of *res judicata* is based on public policy, irrespective of the fact whether the provisions of Civil Procedure Code are strictly applicable to the proceedings before the Central Administrative Tribunal, the Courts of this country have always adopted the principles enshrined in Section 11 of C.P.C. in the context of the proceedings of any judicial body (like the Tribunal). Otherwise, there would never be any finality in the process of adjudication. We do not see any reason to differ from this practice.

The question whether the revisionary authority has the necessary competence to direct reinstatement treating it as a fresh appointment, is a question which the petitioner ought to have raised when such a decision was taken by the revisionary authority, or at least in the subsequent proceedings when he challenged the decision of the employer in not permitting him to seek voluntary retirement. The petitioner, not having raised such an issue, is now precluded from raising the same after long lapse of time on the pretext that there is a change of circumstances.

In the circumstances, we do not see any merits in the writ petition and the same is accordingly dismissed at the admission stage itself. No costs.

JUSTICE J.CHELAMESWAR

JUSTICE M.VENKATESWARA REDDY

20th JUNE, 2005

PGS

To

1 Union of India, rep.by its Secretary to Government of India,
Ministry of Railways, Sanchalan Bhavan, New Delhi.

2 The General Manager, South Central Railway,

Rail Nilayam, Secunderabad.

3 The Divisional Railway Manager (P), South Central Railway

(Hyderabad), Secunderabad.

4) 2 CD copies

5. The Registrar, Central Administrative Tribunal,

Hyderabad Bench, Hyderabad.

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

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(Per Sri Justice J.Chelameswar)

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